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MONTANA ENERGY CONSERVATION PLAN

STATE DOCUMENTS

Working Paper No. 14

ENERGY CONSERVATION IMPLICATIONS OF THE STATE COMMISSION ON LOCAL GOVERNMENT, PROPOSED CODE

A Report to the
Montana Energy Advisory Council

Prepared for

The Montana Energy and MHD Research and Development Institute, Inc.
Butte, Montana

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Energy Conservation Implications of the

State Commission on Local Government, Prosposed Code

This analysis of the proposed code of local government is based on the version submitted by the Montana Commission on Local Government at the beginning of the 1977 legislative session. It does not consider the amendments which have been or may be suggested nor does it consider the prospects for the code's passage in either original or revised form. As written, the code clearly reflects the constitutional philosophy of liberating Montana's cities and counties. Extensive authority for service delivery is provided and explicit authorizations are streamlined to allow flexibility in the method of provision.

In order to determine what powers of service delivery are possessed by local governments, refer first to 47A-6-103 which lists the several dozen explicit services authorized. Any necessary specific references to alternate energy capacity would be added in this section. Subsequent individual titles in areas such as planning, housing, community development, solid waste disposal, and special districts should be examined in order to determine whether sufficient flexibility would exist to implement a particular idea. A selected discussion of pertinent areas follows.

Planning and Zoning

The proposed code language appears to provide sufficient authority and flexibility for a community to provide for and/or promote alternate energy development. Some pertinent areas are identified here for possible minor revision in order to further clarify this status and to promote the possiblity of awareness of the long-range conservation potential. The general definition of "land use element"

(47A-6-43-3.6) in a comprehensive plan could be expanded to include alternative energy along with agricultural, open space, housing, commercial, industrial, recreational, educational, and public uses or the designation could be included in the "Public facilities element" (47A-6-4303.7) which is a compilation of "policy statements, goals, objectives, principles, standards, maps, and action programs for guiding the future development of public or semi-public utilities of a local government." Or, energy could be added as one of the types of development included within the general plan (47-A-6-4307) along with "economic, social environmental, physical, or human resource development." This addition might help enhance awareness along local government units of the long-range potential for alternate energy development as in the example of community or district energy complexes or sources under the category of the plan's "proposed location of private and public land uses, transportation networks, utilities, and other facilities considered necessary by the planning agency." Also an explicit reference to energy generation complexes and/or energy transmission or distribution corridors.

The primary method of implementation of elements of the general plan is through zoning. There appears to be sufficient flexibility and local autonomy in the zoning process to provide for alternate energy projects. Cross references to:

Building and Housing Codes,
Capital improvements

Extraterritorial Powers,

Eminent Domain and

Community Development

need exploration.

Community Redevelopment

Authority exists for local government involvement in the promotion of various development and redevelopment projects in "blighted" areas. Of primary concern is elimination of conditions of crime, disease, poverty and "environmental decline." It may well prove possible to include alternate energy programs as part of a re-

development plan where the community possesses special powers to acquire and hold property for redevelopment (47A-6-4005).

Solid Waste Disposal

This subject provides an illustrative example of state-local interaction in an area of implementation where authority is shared. The question of the ability of communities to develop alternative energy conserving solid waste disposal systems is primarily a consideration of the mandate of the Montana Department of Health and Environmental Sciences as described in R.C.M. 69-40. DHES is authorized to promulgate rules and enforcement regulations for the operation of solid waste disposal areas while counties or district boards of health are the assigned agents of inspection. Since the law does not define "solid waste disposal area" it seems safe to assume that department regulations could be amended to provide for an innovative disposal system.

Several other notes with regard to local innovation are in order: (1) A self-government powers unit would be prohibited from setting regulations or standards other than those of DHES because this area is administratively subjected to state control; (2) local government units are not required to pay state licensing fees in the establishment of a disposal area; (3) creation of a subordinate disposal district is subject to special protest provisions (void upon protest of 50% of family residential units in the area; 47A-6-8004) which might imply difficulty in creating an innovative approach; (4) cooperative service agreements among local units are especially advantageous here.

In order to promote consciousness of the economic, environmental and energy conservation advantages of alternate disposal systems, the purpose and policy language of 47A-6-8101 could be enlarged to include a statement such as: "and to promote innovative methods of recovery of solid waste in the public interest."

Right-of-Way

The acquisition and regulation of local traffic ways is related primarily to the purpose of "efficient administration of county and municipal traffic way systems" in order to further implement the state policy of "safe and efficient state road and highway transportation."(47-A-6-9201) There is elaborate discussion of the provisions for acquiring, condemming, abandoning, designing etc. of rights-of-way in the proposed code. (This is all augmented by provisions of Title 32, state regulation) There is limited discussion of the purposes to which right-of-way may be put. The following evaluation seems correct: (1) existing rights-of-way could be used (as utilities do) for purposes (such as alternate energy distribution) in addition to the traffic purpose as long as the additional purpose does not interfere with the primary purpose. However, it might be appropriate if this were explicitly stated with reference to energy distribution; (2) under the law as proposed, local government probably could not acquire right-of-way for "trafficways" for the primary purpose of energy distribution. This section of the code probably would not be the place to provide such a power.

There seems to be sufficient flexibility for local governments to utilize trafficways for local purposes: "Each governing body may by resolution adopt standards and criteria which must be met before any trafficway may be dedicated to the public use, accepted, opened, vacated, changed, renumbered, renamed, otherwise substantially made different."

It seems that no problem exists with the authority and discretion of local governments to create bicycle ways. There is nothing in the proposed local government code which promotes by subsidy this alternative.

Transportation

The proposed local government code language emphasizes that it is state policy "to encourage the establishment of public transportation services and facilities by local governments to provide innovative, economical, safe, and efficient public transportation." Language referring to "energy conserving" could be included in

47A-4-9401 to give legitimacy to this purpose. Both cities and counties are provided incentive money, passed through by the Department of Community Affairs to operate public transportation systems which have deficit funding. (47A-6-9404)

In all other respects, state law (provisions of Motor Carrier Act, 8-101 to 8-129) are applicable except that local governments need not provide proof of public convenience and necessity and are exempt from payment of fees.

Underground Conversion of Utilities

This section may be the place in which to guarantee the ability to provide for utilization of corridors for alternate energy facilities. The proposed code (47A-6-4701) provides for creation of a local improvement district for the purpose of converting existing overhead electrical and communication facilities to underground locations. Such a district is needed because capital is required, and details of the authorization pertain to obligations of construction and maintenance. One approach might be to have the law authorize and require any new, non-traditional form of transmission to be placed initially underground in a trafficway.

Service Districts

One of the primary goals of local government reorganization in the area of territorial jurisdiction is to minimize fragmentation by reducing the number of special districts and independent local authorities. Any consideration of special districts for the purpose of developing alternate energy generating and distribution facilities should include the thrust of the new code towards streamlining local structures and minimizing the autonomy of independent districts. The major departure from the past in this area is the provision that the general purpose unit of government (city, town, county) will be the authority in the creation and maintenance of most subordinate service districts in order to hold down the number of separate authorities, as in boards.

Thus, general purpose local governments will be allowed to create subordinate districts within their jurisdiction for the differential provision of a service; that is, it may create a tax and service area for the provision of a new service to a portion of the residents or to provide a higher level of an existing service. This authority extends to any service which is named in the extensive list of authorized services (and facilities) of 47A-6-103. (While there is no explicit mention of certain energy facilities, it has been shown that the authority to create nearly any alternate energy mechanism considered could be derived from one or a combination of the enumerated powers)

Two auxiliary considerations are related to the question of service districts. The proposed code provides for a limited number of cases in which the old-style independent special authority can be created. These include and are limited to: airport authorities (Title 1, ch. 9), conservancy districts (Title 89, ch. 34), conservation districts (Title 76, ch. 1), county water and sewer districts (Title 16, ch. 45), drainage districts, (Title 89, ch. 23), hospital districts (Title 16, ch. 43), housing authorities (Title 35, ch. 1) and irrigation districts (Title 89, ch. 12) These are exceptions made if necessary to avoid conflict with state law providing for powers to long-standing authorities. There is virtually no possibility (or need) for expanding this list to include any new (alternate energy) projects.

Also consistent with the principle of minimizing the proliferation of independent authorities is the requirement that no new subordinate service district can be created if the service can be provided by an existing service district or through annexation to a municipality. This has the effect of creating multi-purpose service districts in which one geographical area may receive 2 or 3 services which may complement each other. In the case of alternate energy this stipulation may prove useful where, for example, an innovation in generation of electricity from solid waste would be tied to another special district.

Of more general interest is the provision for creation of local improvement districts (47A-3-427) for the purpose of financing capital improvements through special assessments on property within the district. Such an improvement presumably must fall within the general enumeration of services authorized to be provided. The improvement may be initiated by either petition or resolution of the governing body. Generally, protest by owners of property bearing one-half of the estimated cost of the improvement is sufficient to block. The available methods of assessment in the proposed code are extremely flexible, maximizing the principle that taxes paid will be tied to services delivered. For example, the principles of "relative usefulness" or "connection" basis could be applied in the case of an alternative energy strategy to pave the way for application in a particular neighborhood where not everyone desires participation.

Summary

This discussion identifies some of the more important changes proposed in the recodification of H.B. 122 which could have an affect on future alternative energy development within local government jurisdictions. The interpretations are subject to changes in the bill prior to passage. The possible impacts depend upon its passage.